



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/711,752	10/01/2004	Leonid Mikhailovich Golovanov	1417.12	5751
21901	7590	06/20/2007		
SMITH HOPEN, PA 180 PINE AVENUE NORTH OLDSMAR, FL 34677			EXAMINER WEINSTEIN, STEVEN L	
			ART UNIT 1761	PAPER NUMBER
			MAIL DATE 06/20/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/711,752

Applicant(s)

GOLOVANOV ET AL.

Examiner

Steven L. Weinstein

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>12/23/04</u> . | 6) <input type="checkbox"/> Other: ____ |

Art Unit: 1761

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5, 7, and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Lynn (2,892,719).

In regard to claim 1, Lynn discloses a method of producing a wafer article that would be capable of use with a fat-containing confectionary product comprising the steps of providing from a dough based composition, at least two parts (#10 and 11) of the wafer article, connecting the parts so that they overlap along the matching edges thereof and wherein the edges have allowances to produce the wafer article in the form of a reservoir (#35), which would be capable of accepting a fat containing confectionary product. Claim 1 recites a baking step. Since Lynn discloses the material is dough based and is supporting and maintains its shape, Lynn inherently would have had to bake the dough composition to make it acceptable for eating and to secure its shape. This is all claim 1 positively recites. Although not specifically claimed, it is noted that Lynn teaches it was conventional in the art to provide an edible container for containing food wherein the edible container, due to its design, is a variable volume container, capable of holding different amounts or size of food. This is exactly applicants' problem and solution as well. In regard to claim 2, Lynn discloses that the parts are connected in such a way that the form and/or size of the wafer article can be changed by moving the parts relative to each other. In regard to claim 3, Lynn discloses that the parts are

Art Unit: 1761

connected in such a way that its form can be changed by moving the parts (i.e., it gets wider or narrower). In regard to claim 4, Lynn discloses that the initial position of the parts can be changed by external force (i.e., sliding the parts inwardly or outwardly). In regard to claim 5, the language is less than clear. The claim is being construed that each of the parts of the article separately has a different form than the form obtained by connecting the parts; which, of course, is the case with the article of Lynn. Claims 7 and 10 are rejected for the reasons given above.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6,8,11, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lynn in view of Gornet et al (D369,451) and Corn et al(D225,919), further in view of Boon (2,698,802), Cressey (1,382,601), Neuhausen (309,644), Hoy (6,063,412), Schallip (D435,327), and Moreau (4,943,063).

In regard to claim 6, claim 6 recites that the parts of the article are connected so that it has the form of various recognizable forms. The particular form one imparts to any article is seen to have been an obvious matter of choice and/or design. In any case, Gornet, Corn et al, Boon, Cressey, Neuhausen, Hoy, Schallip, Moreau can all be relied on to teach it was notoriously conventional in the art to provide edible articles, either as a single piece or multiple parts, either as an edible container or just a decoration,

Art Unit: 1761

wherein the single part alone, or the multiple parts put together, provide a recognizable shape. Claims 8, 11, and 13 are rejected for the reasons applied against claim 6.

Claims 9, 12, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lynn in view of Cillario (EP86319) and Muello (D295,570).

It is first noted that it is not clear what are the alternative combinations and permutations in claims 9, 12 and 14. The claims are being construed to read that the article contains a powder glaze or non powder glaze and the glazes are associated with either nuts or wafer crumb (the meaning of the latter also not being clear). As evidenced by applicants' admission of the prior art in the form of Cilario, it was well established to provide a baked, edible wafer container with both a coating (i.e., a glaze) and nut pieces. Thus, applicants are not the first to provide such a covering on an edible container. Note, too, the particular conventional ingredients one chooses to add to a food product is seen to have been an obvious matter of choice and/or personal taste. To modify Lynn and provide the recited ingredients would have been an obvious function of the food product one chooses to associate with the edible container. Cilario discloses the recited ingredients would be used with a fat containing confectionary. Muello is further evidence of edible pieces in an edible container.

The remainder of the references cited on the PTO892 form are cited as pertinent art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven L. Weinstein whose telephone number is 571-

Art Unit: 1761

272-1410. The examiner can normally be reached on Monday-Friday 7:00 A.M.-2:30 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Steve Weinstein
STEVE WEINSTEIN
PRIMARY EXAMINER 1761
4/15/07